

*And Smith  
Jurat*

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

**FILED**

97 OCT 20 AM 11:05

U.S. BANKRUPTCY COURT  
DIST OF SOUTH CAROLINA

IN RE:

Charlotte Ann Smith,

Debtor.

Charlotte Ann Smith,

Plaintiff,

v.

Daniel M. Smith,

Defendant.

Case No. 94-73792-B,

Adversary No. 95-8279-B

**JUDGMENT**

Chapter 11

**ENTERED**

OCT 21 1997

V. A. C.

Judgment on Order in the within matter, dated October 10, 1997;

IT IS ORDERED that all transfers of real property between the parties, as evidenced by the previously executed Deeds, are ratified and confirmed in absolute to the grantees thereof. The spouse from whom these assets or rights were transferred has no further marital interest therein. And it is further

ORDERED that the transfer of the television set by Mr. Smith to Mrs. Smith at the time of the divorce of the parties is ratified as a part of the marital property settlement. And it is further

ORDERED that the transfers of the vehicles, the Mercedes Benz sedan to Mrs. Smith and the GMC pick up & 1924 replica Model T Bucket Roadster to Mr. Smith, are herewith ratified as a part of the marital distribution of property; and it is further

ORDERED that Daniel M. Smith shall deed to Charlotte Ann Smith a  $\frac{1}{2}$  interest in that property known as 184 S. Cherry Road, York County, Rock Hill, South Carolina; that Mr. Smith is to pay for Deed preparation and that Mrs. Smith to pay all recording fees. The income of the operation of this property shall be, after the date of

97-244

*68*

this Order, utilized first to pay mortgage debt encumbering the property, then payment of taxes on this property, then to pay any utility charges on this property, then to pay insurance on this property and then to pay other such expenses of maintenance and/or upkeep of this property, and lastly to be divided equally between plaintiff and defendant. And it is further

ORDERED that the assets of D. M. Smith Company which were assets of that corporation on the date of the divorce shall forthwith be sold and the proceeds divided between the parties after costs of sale. And it is further

ORDERED that Daniel M. Smith shall forthwith tender to Charlotte Ann Smith a promissory note payable at no less than \$50.00 per month at eight (8%) percent interest, said note to be secured by a mortgage on Mr. Smith's interest in the realty located at 184 S. Cherry Road, and that Mrs. Smith shall pay for the costs of mortgage preparation and filing. And it is further

ORDERED that any and all rights to litigation belonging to either of the parties are and remain the individual property of that party only. And it is further

ORDERED that the within Order be, and it herewith is, entered as a full and complete and final division of all marital property between plaintiff and defendant.

AND IT IS SO ORDERED.

  
United States Bankruptcy Judge

Columbia, South Carolina  
 1997

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

**FILED**  
97 OCT 10 AM 8:42  
U.S. BANKRUPTCY COURT  
DIST OF SOUTH CAROLINA

IN RE:

Charlotte Ann Smith,

Debtor.

Case No. 94-73792-B

Charlotte Ann Smith,

Plaintiff,

Adversary No. 95-8279-B

v.

Daniel M. Smith,

Defendant.

**ORDER**

Chapter 11

**ENTERED**  
OCT 10 1997  
S. R. P.

THIS MATTER came before the Court for trial on Wednesday, September 17, and Thursday, September 18, 1997. All legal issues have been previously determined by this Court in previous hearings, leaving only for determination the factual issues of disposition of property. In this action, plaintiff seeks a determination of the division of marital property and plaintiff requests a division of that marital property. After hearing the testimony, considering the witnesses' demeanor, and examining the evidence presented by the parties, this Court finds as follows:

**FINDING OF FACT**

On September 29, 1977, the parties were married. At the time of the marriage, there was one son of Mrs. Smith: at some later date, Mr. Smith adopted that son. The parties lived together as husband and wife until 1990. The marriage was ended on November 14, 1990, when Mrs. Smith was granted a divorce *a vinulo* *matrimoni* on the grounds of one year's continuous separation. There was no order of division of marital property entered in that action. At the time that the divorce action was brought, the attorney who represented Mrs. Smith in that action was indicted for

64

possession of controlled substances. Mr. Smith was not represented in the divorce proceeding.

On September 18, 1988, Mr. and Mrs. Smith at the request of Mrs. Mary Curtis (the mother of Mrs. Smith), entered into an Agreement, by which Mrs. Smith was promised in the event of dissolution of that marriage, the first \$300,000 of marital property; and then all remaining marital property would be divided equally among the parties (hereinafter the "1988 Agreement").

On October 28, 1990, immediately before their divorce, Mr. and Mrs. Smith executed agreements delineating which properties were to be transferred to each other (the "1990 Agreement"); and, on February 24, 1994, on the eve of Chapter 11 of plaintiff, plaintiff quit-claimed her interest in the marital residence, 2740 Island View Road, Fort Mill, South Carolina, and defendant quit-claimed his rights in the properties known as Scotland Yard, Fort Mill Daycare, 172 South Cherry Road, and Mt. Gallant Road (the "1994 Deeds"). These Deeds were dated on the same date, and witnessed and probated by the same persons. For the reasons enumerated below, this Court finds that the 1988 Agreement, as supplemented by the 1990 Agreement and the 1994 Deeds, are applicable, enforceable, and govern the outcome of this case.

Subsequent to the execution of 1994 Deeds, plaintiff entered into a Chapter 11 proceeding in this Court; a plan of reorganization was proposed by her, has been confirmed and is in the process of being consummated. That Chapter 11 plan deals with substantially all of the property hereinbelow described. Defendant did not participate in the bankruptcy, and was not scheduled as a party to the reorganization proceeding.

At the time of their divorce, the parties had titled in either or both of their names, the following properties (all located in or around Rock Hill, South Carolina, except as so designated):

1. Rental Property at 172 S. Cherry Road

This property was acquired by Mr. and Mrs. Smith as tenants in common as a gift from Mrs. Curtis. Mrs. Curtis testified that when she deeded this property to Mr. and Mrs. Smith, she intended that the property be considered, in case of divorce, Mrs. Smith's realty for purposes of property division. Subsequent to the divorce, this property was sold under a bond for title. Mr. Smith, at approximately the time of the sale, quit-claimed his interest in this property to Mrs. Smith. Mrs. Smith received the down-payment, and has collected the payments on the bond for title. This Court finds that this property, its income (if any), and the debts related thereto are the property of, and the debts of, plaintiff Charlotte Ann Smith, alone and exclusively; and defendant Danny M. Smith is herewith absolved of any debts arising therefrom.

2. Approximately 17 Acres of Real Property on  
Mt. Gallant Road

This property was acquired by Mr. and Mrs. Smith as tenants in common as a gift from Mrs. Curtis. Mrs. Curtis testified that when she deeded this property to Mr. and Mrs. Smith, she intended that the property be considered, in case of divorce, Mrs. Smith's realty for purposes of property division. This property, since the divorce, may be environmentally damaged, and may not be salable. A building on this property was converted into a triplex. This Court finds that the 1988 Agreement, as modified, clearly demonstrates an intent by the parties to enter into the informal marital division of properties; that this property, its income (if any), and the debts related thereto are

the property of, and the debts of, plaintiff Charlotte Ann Smith; and defendant Danny M. Smith is herewith absolved of any debts arising therefrom.

3. ½ Interest in Scotland Yard Park

Scotland Yard was acquired by Mrs. Smith and her sister Mary Jo Moore during the marriage of the Smiths, as tenants in common, as a trailer park. It was so utilized during the marriage of the Smiths. At the time of the divorce, the property was used as a trailer park; and although Mrs. Smith may have had plans at some time in the future to develop this into a modular home subdivision, those plans were not far enough along to change the nature of this property from that of a trailer park as of the date of the divorce. This Court further finds that the 1990 Agreement, and the 1994 Deeds of Conveyance of Scotland Yard by Mr. Smith of his interest therein to Mrs. Smith clearly demonstrates an intent by the parties to enter into the informal division of marital properties; that Mrs. Smith is entitled to, and Mr. Smith has no right to, any part of this property, or the income from this property; and that Mr. Smith is absolved of any and all debts owed on or arising out of this property.

4. ½ Interest in the Real Property and Improvements of the  
Property known as Fort Mill Daycare

Mrs. Smith and Mrs. Moore purchased this property as tenants in common during the marriage of the Smiths. It was developed as a daycare center. In addition, Mrs. Smith owned a 40% interest of the furnishings of the daycare center at the time of the divorce; and 40% of CMS Corporation, the entity which managed and operated the daycare center. All of these entities have been sold subsequent to the Order for divorce. This Court finds that the 1990 Agreement, and the 1994 Deeds of

Conveyance by Mr. Smith of his interest in this property to Mrs. Smith clearly demonstrates the intent of the parties to make an informal marital settlement.

5. Unit 906, Holiday Towers, Myrtle Beach, S.C.

The Debtors, prior to the dissolution of their marriage, purchased this property as tenants in common. By one of the 1994 Deeds, Mr. Smith transferred his interest in this condominium to Mrs. Smith. Mrs. Smith later sold the property; and repaid marital debts arising out of that property. The Court finds that Mrs. Smith utilized other property which had been divided by the parties at the time of their divorce to fully satisfy these debts. This Court accordingly finds that Mr. Smith has no right to any income realized from the sale of this property; and Mr. Smith is absolved of the debts owing or arising out of this property.

6. 2740 Island View Drive (the Marital Residence)

This property was acquired by Mr. and Mrs. Smith as joint tenants in 1989; they resided there for but a short period of their marriage. The proceeds for the purchase of this property were marital assets; the payments, until the date of divorce, on the mortgage were made from marital property. Under the informal property settlement agreement between the parties, which this Court specifically finds that the 1990 Agreement and the 1994 Deeds of Conveyance of this property by Mrs. Smith to Mr. Smith clearly demonstrates the intent of the parties to enter into the informal division of marital properties; that Mr. Smith is entitled to, and Mrs. Smith has no right to, or any part of this property, or the income from this property; and that Mrs. Smith is absolved of any and all debts owed on or arising out of this property.

### 7. Rental Property at 184 S. Cherry Road

This property was acquired sometime after the marriage in 1977; and was in the name of Mr. Smith solely, the down-payment made by Mr. Smith's mother. This property at the time of the divorce was income producing; and it is still income producing property. The Court finds that this property, since the dissolution of the marriage, that the rental proceeds from this property have been utilized to make mortgage payments, expenses and to pay for improvements. Mr. Smith has received all of the payments on the rental of this property. This Court finds that the rental income realized from this property by Mr. Smith is approximately the same amount that has been received by Mrs. Smith from the Fort Mill Day Care, and that one sets off the other, and there is no right by the parties to claim against each other for this income.

The Court finds that the parties did <sup>provide</sup> ~~not include any provision~~ <sup>WTB</sup> for this property in the 1990 Agreement, <sup>but not in</sup> ~~for~~ <sup>WTB</sup> the 1994 Deeds. Accordingly, this Court finds that this property is controlled by the <sup>1990</sup> ~~1988~~ <sup>WTB</sup> Agreement; and that 184 S. Cherry Road be divided between the two of them equally. Accordingly, the Court finds that Mr. Smith should be required to Deed a ½ interest in this property to Mrs. Smith to effectuate the 1990 <sup>WTB</sup> ~~1988~~ Agreement.

### 8. Vehicles

This Court finds that the fair market values of the vehicles at the time of the divorce closely approximates the division of those vehicles which was made by the parties in 1990; and accordingly ratifies the same.

### 9. Household Goods of the Marital Residence

There is substantial disagreement as to the value and scope of the personalty both in and at the Island View residence. Clearly, the intention of the



parties under the 1990 Agreement concerning this property is that this property was to be considered marital property; and was to be divided equally between the parties.

This Court finds, after weighing the testimony of both parties, that the fair market value of the marital goods which remain to be divided is \$10,000, one half of which is payable to Mrs. Smith by Mr. Smith.

#### 10. Stock and/or Assets of D. M. Smith Construction Company

The parties had conflicting estimates as to the value of D. M. Smith Construction Company at the time of their divorce. Mrs. Smith stated that on the date of their divorce it was worth \$150,000; Mr. Smith stated that it was worth approximately \$20,000 to \$25,000. Mr. Smith did say that almost all of the equipment that was a part of this entity as of the date of divorce was still in his possession. As the corporation at about the time of the divorce was dissolved, and as the asset value is indeterminate, the Court finds that the property should be sold, and one half the funds realized should go to each of the parties.

#### 11. Litigation

There was substantial testimony concerning litigation by the plaintiff and others against York County, South Carolina, for various possible causes of action; and also by her against parties who allegedly polluted the Mt. Gallant Road property. This Court finds that any rights or causes of action which have arisen against the County of York arose in all material respects after the dissolution of the marriage, and accordingly finds that defendant has no rights therein. This Court further finds that any rights or causes of action arising out of the pollution of Mt. Gallant Road, which are personal in nature (e.g., have physically harmed the parties) are individual to each party, and this

Court accordingly finds that any rights that Daniel M. Smith has for damages to his person, and that any rights that Charlotte Ann Smith has for damages to her person, are individually theirs, and accordingly not marital property.

It has accordingly

ORDERED that all transfers of real property between the parties, as evidenced by the previously executed Deeds be, and they herewith are, ratified and confirmed in absolute to the grantees thereof. The spouse from whom these assets or rights were transferred has no further marital interest therein. And it is further

ORDERED that the transfer of the television set by Mr. Smith to Mrs. Smith at the time of the divorce of the parties be, and it herewith is, ratified as a part of the marital property settlement. And it is further

ORDERED that the transfers of the vehicles, to wit, the Mercedes Benz sedan to Mrs. Smith, and the GMC pick up and 1924 replica Model T Bucket Roadster to Mr. Smith, be, and it herewith is, ratified as a part of the marital distribution of property; and it is further

ORDERED that, pursuant to the <sup>1990</sup>~~1986~~ <sup>WTB</sup> Agreement, Daniel M. Smith shall forthwith Deed to Charlotte Ann Smith a ½ interest in that property known as 184 S. Cherry Road, Rock Hill, South Carolina, Mr. Smith to pay for Deed preparation and Mrs. Smith to pay all recording fees. The expenses of the operation of this property shall be, after the date of this Order, utilized first to pay mortgage debt encumbering the property, then to taxes, then to any utility charges, then to insurance and other such expenses of maintenance and/or upkeep of this property, and lastly to be divided equally between plaintiff and defendant. And it is further

ORDERED that the assets of D. M. Smith Company which were assets of that corporation on the date of the divorce, shall forthwith be sold, and the proceeds divided between the parties after costs of sale. And it is further

ORDERED that Daniel M. Smith shall forthwith tender to Charlotte Ann Smith a promissory note payable at no less than \$50.00 per month on terms to be decided by Danny Smith, at eight (8%) percent interest, said note to be secured by a mortgage on Mr. Smith's interest in the realty located at 184 S. Cherry Road with Mrs. Smith to pay for the costs of mortgage preparation and filing. And it is further

ORDERED that any and all rights to litigation belonging to either of the parties are and remain the individual property of that party only. And it is further

ORDERED that the within Order be, and it herewith is, entered as a full and complete and final division of all marital property between plaintiff and defendant.

  
United States Bankruptcy Judge

Columbia, South Carolina  
Oct 9, 1997

- marital property

**FILED**

**IN THE UNITED STATES DISTRICT COURT**

**MAR - 4 1998**

**FOR THE DISTRICT OF SOUTH CAROLINA**

LARRY W. PROPPS, CLERK  
COLUMBIA, S.C.

**COLUMBIA DIVISION**

IN RE: CHARLOTTE ANN SMITH, )

Debtor. )

DANIEL SMITH, )

Appellant, )

vs. )

CHARLOTTE ANN SMITH, )

Appellee. )

**ENTERED**

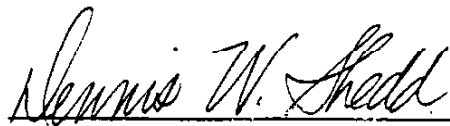
3/4/98

C.A. No. 3:98-085-19

**ORDER**

This is an appeal from a final order and judgment of the United States Bankruptcy Court for the District of South Carolina. See 28 U.S.C. § 158(a). After carefully reviewing the record and the controlling legal authorities, the Court concludes that the order and judgment should be **AFFIRMED**.

IT IS SO ORDERED on this the 3<sup>rd</sup> day of March, 1998, at Columbia, South Carolina.



DENNIS W. SHEDD  
UNITED STATES DISTRICT JUDGE

**A TRUE COPY**

Attest: Larry W. Propps

By:   
DEPUTY CLERK

#80

6

OFFICE OF THE CLERK

*Judge Bishop's Co*

UNITED STATES BANKRUPTCY COURT

BRENDA K. ARGOE  
CLERK OF COURT

DISTRICT OF SOUTH CAROLINA  
1100 LAUREL STREET  
POST OFFICE BOX 1448  
COLUMBIA, SOUTH CAROLINA 29202

TELEPHONE (803)765-5436

DATE: October 21, 1997

TO: Robert F. Anderson  
PO Box 76  
Columbia SC 29202

Reid B. Smith  
PO Box 5537  
Columbia SC 29250

RE: Smith vs Smith  
Adv No: 95-8279

Pursuant to Federal Rule of Bankruptcy Procedure 8004, this is to notify you that a Notice of Appeal in the above-referenced case was filed in this office on October 10, 1997. A copy of that notice along with a copy of Local Bankruptcy Rule 8006-1 and a copy of the order and judgment of this court which has been appealed is enclosed. Your attention is invited to Part VIII of the Federal Rules of Bankruptcy Procedure, especially Rule 8006, et seq.

Pursuant to Federal Rule of Bankruptcy Procedure 8006, the appellant shall file in this office and serve on the appellee, within ten days after the filing of the notice of appeal, a designation of the items to be included in the record on appeal and a statement of the issues to be presented. Within ten (10) days after the service of the statement of the appellant, the appellee may file and serve on the appellant a designation of additional items to be included in the record on appeal. See Federal Rule of Bankruptcy Procedure 8006 for additional time frames in the event cross-appeals are filed.

A copy of the designated record, for transmittal to the district court, must be furnished by the parties to the appeal, either by providing copies of the documents designated as the record to this office or by requesting this office to make copies of the documents and paying for the copies at \$.50 per page. It is suggested that copies of the documents designated as the record, or a request that the clerk's office make the copies, be submitted simultaneously with the filing of the designation of the record. Failure to provide the copies, or to request the clerk to make the copies, by the time the record is otherwise ready for transmittal to the district court, will result in the copies being made and the designating parties being billed at fifty (\$.50) per page pursuant to Local Bankruptcy Rule 8006-1.

In the event that the appellee does not wish to file an additional designation of items to be included in the record, the enclosed Statement as to Record on Appeal must be completed and filed with this court.

A Transcript Order Form AO435 is also enclosed. This form is to be completed by any party who, in the designation of the record, requests that a transcript of a hearing be made a part of the record on appeal.

Letter Re: Appeal

This request should be made within five (5) days of the filing of the designation.<sup>1</sup>

Your attention is invited to Federal Rule of Bankruptcy Procedure 8006 and Local Bankruptcy Rule 8006-1 regarding payment arrangements for transcripts.

The record on appeal will be transmitted from this office to the Clerk, United States District Court, upon completion, pursuant to Federal Rule of Bankruptcy Procedure 8007, and parties to the appeal will receive notice of such transmittal.

At the request of the Clerk, United States District Court, parties to this appeal are hereby advised that any designation of the record or Statement as to Record on Appeal must contain a statement as to whether or not there is, or ever has been, an appeal to the district court in any related case or adversary proceeding.

Very truly yours,

BRENDA K. ARGOE, Clerk of Court

By: 

Vicki A. Counts, Deputy Clerk

Enclosures

cc: Appellant

United States Trustee  
1201 Main Street, Suite 2440  
Columbia, SC 29201

---

If a transcript of a hearing that was held prior to April 22, 1991 (the date the court began using the electronic court recording system) is required, the electronic court recorder operator will advise the parties of the contract or freelance reporter to contact regarding arrangements for preparation of the transcript.

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE: } BANKRUPTCY CASE NUMBER: 94-73792-B  
Charlotte Ann Smith, } ADVERSARY CASE NUMBER: 95-8279-B  
Debtor, }  
Charlotte Ann Smith, } CHAPTER 11  
Plaintiff/Appellee, }  
v. }  
Daniel M. Smith, } NOTICE OF APPEAL  
Defendant/Appellant. }

Daniel M. Smith, the defendant, appeals under 28 U.S.C. Section 158(a) or (b) from the order of the bankruptcy court entered in this adversary proceeding on the 10th day of October, 1997.

The parties to the order appealed from and the names of their respective attorneys are as follows:

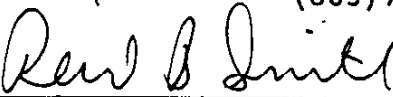
Charlotte Ann Smith

Daniel M. Smith

Attorney: Robert F. Anderson  
Post Office Box 76  
Columbia, SC 29202  
(803) 252-8600

Attorney: Reid B. Smith  
PO Box 5537  
Columbia, SC 29250  
(803) 779-2255

Dated: October 20th, 1997.

  
Reid B. Smith, Esquire  
Attorney for Appellant  
District Court ID # 4200  
3106 Devine Street  
Post Office Box 5537  
Columbia, SC 29250  
(803) 779-2255

CT OF SOUTH C

97-667-20  
BANKRUPTCY CASE NUMBER: 94-73792-B

**ADVERSARY CASE NUMBER: 95-8279-B**

## CHAPTER 11

**AFFIDAVIT**

I, Jessica Branon SMITH AND MORENO, PA, do hereby certify that I have on October 20th, 1997 served a Notice of Appeal in the above entitled matter upon the following parties in interest, shown below, by mailing a copy of the same by the United States Mail, with proper first-class postage affixed thereto:

Jessica Branon  
Jessica Branon

**NOTARY PUBLIC FOR SOUTH CAROLINA**  
My Commission Expires: 11-08-01